IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/08/2004

CORAM

THE HON'BLE MR. JUSTICE P.K.MISRA
and
THE HON'BLE MR. JUSTICE A.K.RAJAN

W.P.NO.9437 OF 2000

M.Thangamani
B-591, Madras Port Trust
Housing Colony
Tondiarpet
Chennai. ..Petitioner.

-Vs-

1. Deputy Inspector General
Central Industrial Security Force
Head Quarters
Rajaji Bhavan
'D' Block
Besant Nagar
Chennai-90.

2. The Commandant
Central Industrial Security Force Unit
Chennai Port Trust
Chennai-1.

3. The Assistant Commandant
Central Industrial Security Force Unit
Chennai Port Trust
Chennai-1. ..Respondents.

Petition filed under Article 226 of the Constitution of India
praying for an issue of a Writ of Certiorarified Mandamus, as stated below.

For Petitioner : Mr. M.Md.Ibrahim Ali

For Respondents : Mr.S.Nethaji
ACGSC

:O R D E R
(Order of the Court was delivered by P.K.Misra,J)

The Writ Petition has been filed praying for an issue of a Writ of Certiorarified Mandamus, to call for the records relating to the Appellate Order No.V-15014/Estt.I/ MT/ChPT/2000/2116 dated 26-2-2000 passed by the second respondent confirming the final order No.V-15014/2/ CISF/ Ch.P.T./AC.II/99/334 dated 30-10-1999 passed by the third respondent, quash the same and direct the respondents to refund the salary recovered from March, 2000 to the petitioner.

2. Heard, Mr. M.Md.Ibrahim Ali, learned counsel for the petitioner and Mr.S.Nethaji, learned Additional Central Government Standing Counsel for the respondents.

3. The present Writ Petition is directed against the order passed by the disciplinary Authority, as confirmed by the Appellate Authority imposing punishment of stoppage of one increment for one year, without cumulative effect.

4. The allegation against the petitioner, who is an employee under the Central Industrial Security Force is to the effect that on 3-9-19 99, while the petitioner was on duty, he had unauthorisedly allowed some person to enter inside the Port Trust area on receipt of Rs.100/- from the said person. The aforesaid incident was allegedly witnessed by the Deputy Director (Shipping Service). A complaint regarding the aforesaid incident was made by the Deputy Director (Shipping Service) on 6-10-1999 and thereafter, the present petitioner was asked to submit his explanation. In his explanation, the petitioner had denied about the receipt of the money and also had denied the allegation that he had allowed some unauthorised person to enter inside the Port Trust. He had given the explanation that, while he was on duty on 3-9 -1999, the Deputy Director (Shipping Service)wanted to enter the Port premises. Since, he was in civil dress, the petitioner was not able to identify him and therefore, he asked him to show his identity card and ultimately, on production of the identify card, the said Officer was allowed inside the Port Trust area. Being aggrieved because of such incident, the above allegation had been made by the Deputy Director (Shipping Service) against the petitioner. It was also indicated that such allegation had been made against the petitioner after a long delay of 33 days.

5. The disciplinary Authority has held that there was no reason to disbelieve the report given by the Deputy Director (Shipping Service) and ultimately, awarded the petitioner with the minor punishment of stoppage of one increment, with ffect. The Appeal filed by the present petitioner also met with the very same fate. Hence, the petitioner has come forward to file the present Writ Petition.

6. At the outset, the learned counsel appearing for the respondents has submitted that the order passed by the Appellate Authority should have been challenged in a revision as contemplated under Section 9(2-A) of the Central Industrial Security Force (Amendment and Validation) Act, 1999

and such revision having not been filed, the present writ petition should not be entertained. Section 9 (2-A) is to the following effect:
"Any enrolled member of the Force aggrieved by an order passed in Appeal under Subsection (1) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedures as may be prescribed."

7. The learned counsel appearing on behalf of the petitioner on the other hand submitted the power of revision being a matter of discretion of the Authority may not be considered as an efficacious alternative remedy, the petitioner has filed the Writ Petition in this Court, without filing a revision.

8. Keeping in view the provision contained in Section 9 (2-A) of the Central Industrial Security Force (Amendment and Validation) Act, 1999, we do not think that the scope of revision is limited in any manner and the revisional authorities can go into all aspects including any factual dispute as well as legal propriety and correctness of the order under challenge. In fact, the contentions raised by the petitioner relate to factual aspects, which can be better appreciated by the revisional Authority under Section 9 (2-A) of the Central Industrial Security Force (Amendment and Validation) Act, 1999 rather than by the High Court deciding the matter under Article 226 of the Constitution of India.

9. Having regard to all these aspects, we think that the interest of justice would be met by permitting the petitioner to file a revision, within a period of three weeks from today and if any such revision is filed within the said period, the revisional Authority shall dispose of the matter on merits, without raising the question of limitation. The contentions raised by the petitioner relating to delay in making the complaint and other aspects should also be considered by the revisional Authority. Such revision should be disposed of within two months from the date of filing of the revision petition by the petitioner.

10. Subject to the aforesaid observation, the Writ Petition is disposed of. No costs.

Index:yes
Website:yes

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To

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